

Dear NASAA Team,

My name is Colleen OBrien, and I have extensive experience as a franchise development professional, broker, CFE as recognized by the IFA and a past franchisee. I helped grow a brand from 18 locations to over 1000 locations in under 10 years. That same brand is highly decorated by the Franchise Business Review. I am writing to provide feedback on the NASAA Model Franchise Broker Registration Act. Thank you for allowing me to share my insights based on years of involvement in the franchise industry.

It is commendable to ensure ethical practices in franchise broker process, but the current draft of the Model Act introduces complexities that might inadvertently hinder the franchise sales process. Here are my observations and suggestions:

### **Legal accountability by franchisor in the FDD**

The Franchise Disclosure Document (FDD) is a legal document. Misrepresentation in a FDD is not automatically a felony, but it can lead to civil penalties, fraud claims, and even criminal prosecution, especially if the misrepresentation is material, intentional, or involves allegations of fraud, deceptive practices, or failure to disclose required information. Violations of the FTC Rule can result in significant legal and financial consequences for the franchisor, including lawsuits, damages, and rescission of the franchise agreement.

**The point** – Anyone in the award process should be able to assume the FDD is factually correct. This includes a franchise broker who may relay investment details provided by a franchisor in the FDD.

### **Size of the audience**

Accurately determining the number of franchise inquiries submitted each year is not possible, as prospective candidates typically approach a franchise directly or respond to an advertisement. Broad estimates suggest between 1 million and 2 million inquiries annually. What truly matters, however, is how many of these inquiries result in an executed franchise agreement—a figure estimated at only 15,000 per year. Of those, how many involved a franchise broker? Let's go with a large number like 20% (approximately 3,000) involve a franchise broker. With a straight line division for 50 states, this is 60 per state. The spreads differently by population, but the point is illustrated.

The concern with NASAA's proposal is that it imposes an unnecessary burden on referral sources who have no role in the sales process and no control over disclosure to candidates. If the intent is simply to ensure candidates understand that brokers are compensated by franchisors, there is a far more practical solution: include a straightforward reference in the FDD stating that brokers or referral sources may participate in the franchise award process and may receive a commission for their role.

It is important to remember that the candidate bears the ultimate responsibility to carefully review the FDD before making a decision. At the end of the process, it is the candidate—not the broker—who decides to proceed based on the facts contained in the disclosure document. Placing additional regulatory weight on referral sources shifts focus away from where it belongs: ensuring candidates

have the information necessary to make an informed decision. The small number stated above is more readily served with information in the FDD.

**The point** – An overly burdensome process both financially and administratively is being proposed in a process that primarily resides with the franchisor. Legal action is an option for the franchise candidate with a valid complaint with today's laws. Placing information in the FDD that referral resources are utilized and compensated accurately targets the audience in question.

## Definitions

There is a massive distinction between a Franchise Broker and a Franchise Sales Organization (FSO). An FSO has a higher involvement in the award process, while a Franchise Broker does not.

**The point** – FSOs seem to be more of the concern, while conjoining Franchise Brokers with that group.

## Franchisees are brokers?

Why would a burden be put on a franchisor that utilizes a franchisee in the sales process to cap their compensation at \$5000?

## The End Game

What is the goal? My interpretation is that we want the franchise candidate to understand how the broker is compensated and that the broker is competent. Would a license using the engine of the CFE certification offered by the IFA suffice? Would including language in a franchisor's FDD referring to the use of franchise brokers resolve this issue? If a franchisor would be required to disclose if a franchisee referral system is in place (at least at one time that was the case) – would this be significantly different? I believe the point has been made that the franchisor bears the burden here. What about their representatives? Should we not look at the pool of all in the process? Lastly – are we forgetting the role of the candidate? It is their decision to move forward based on the facts from the franchisor and what is disclosed.

## Conclusion

The Model Act should protect prospective franchisees while fostering an environment conducive to ethical franchise brokering. The current draft introduces complexities that could discourage potential franchisees and impose undue burdens on brokers and franchisors. I urge the NASAA to consider these suggestions to develop a more balanced and effective regulatory framework.

Thank you for considering my comments. I am open to further discussions and clarifications. Please feel free to contact me at your convenience.

Sincerely,

Colleen O'Brien,

Owner of Franchise for You Consulting, Inc and Author of The Franchise Game